
HIGHLAND VIEW

CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Highland View Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this _____ day of _____, 2006, by and between **Highlands Prairie Village, LLC**, a Nebraska limited liability company, hereinafter referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

R E C I T A L S

A. Owner has requested the City to annex approximately 154.77 acres more or less of land generally located at NW 12th Street and Alvo Road. The approximately 154.77 acres is hereinafter referred to as the "Property" and is legally described on Exhibit A attached hereto.

B. Owner has requested a Change of Zone to rezone the Property from AG Agriculture District to R-3 Residential District.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Property in phases and as part of approving and accepting final plats of the Property.

2. **Change of Zone.** The City agrees to approve the Change of Zone.

3. **Water Main.**

A. Construction. Owner agrees to construct a 16-inch water main in NW 12th Street from Alvo Road south to West Little Bear and a 12-inch water main internally through the Property. The water mains shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

B. Reimbursement. City agrees to use its best efforts to reimburse Owner for the cost of the 16-inch water main in Fiscal Year 2011/2012. The City further agrees to reimburse

Owner for the difference between the cost of the 12-inch water main and the cost of a typical 6-inch water main following completion of construction.

C. Reimbursement.

(1) Directed Water Distribution Impact Fees. The City agrees to reimburse Owner for the cost to construct the 16-inch water main from Directed Water Distribution Impact Fees up to the Directed Water Distribution Impact Fee Amount of \$218,246.00 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Water Distribution Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Water Distribution Impact Fees collected from the Property;

(b) Owner shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) Owner's Cost in Excess of Directed Water Distribution Impact Fees. In the event Owner's costs for construction of the 16-inch water main are in excess of the Directed Water Distribution Impact Fee Amount of \$218,245.00, the City agrees to use its best efforts to reimburse Owner with interest for the excess costs from other Water Distribution Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the water main is substantially completed as determined by the City. Reimbursement from Impact Fees shall be subject to the same conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Owner pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Water Distribution Impact Fee Facility Improvements. If a developer does not fund the construction of Water Distribution Impact Fee

Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

4. Sanitary Sewer.

A. Construction. Owner understands and acknowledges that the Property is not sewerable until a public sanitary sewer is extended from the Property to NW 27th Street and that said extension is not shown in the City's six-year Capitol Improvement Program. Therefore, Owner agrees that no final plat of the Property shall be approved until the sanitary sewer is extended from the Property to NW 27th Street. Owner further agrees that if Owner desires to be connected to the public wastewater system prior to the City's extension of the sanitary sewer from the Property to NW 27th Street, Owner may construct the sanitary sewer by executive order construction and public bidding in accordance with City procedures at Owner's own cost and expense. If the sanitary sewer is built and located in a location which will allow the sewer to serve other property, the City agrees to use its best efforts to reimburse Owner for that portion of the sanitary sewer which exceeds eight inches in diameter without interest for said cost (except for the City's fixed fee for engineering services).

B. Reimbursement.

(1) Directed Wastewater Impact Fees. The City agrees to reimburse Owner for the cost to extend sanitary sewer from the Property to NW 27th Street from Directed Wastewater Impact Fees up to the Directed Wastewater Impact Fee Amount of \$281,726.00 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Wastewater Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the Property;

(b) Owner shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) Owner's Cost in Excess of Directed Wastewater Impact Fees. In the event Owner's costs to extend sanitary sewer from the Property to NW 27th Street are in excess of the Directed Wastewater Impact Fee Amount of \$281,726.00, the City agrees to use its best efforts to

reimburse Owner with interest for the excess costs from other Wastewater Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the connection fee is paid. Reimbursement from Impact Fees shall be subject to the same conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Owner pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Wastewater Impact Fee Facility Improvements. If a developer does not fund the construction of Wastewater Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

Owner further understands and acknowledges that the City has concerns about the capacity of the sanitary sewer downstream from the Property which may be exacerbated by full development of the Property under the change of zone. Therefore, Owner agrees that no more than One Hundred Fifteen (115) lots shall be final platted until the downstream capacity problems are corrected or the City determines that the platting of additional lots will not exceed the downstream capacity.

If requested by Owner, the City agrees to use its eminent domain powers to acquire the permanent and temporary construction easements needed for the sanitary sewer to be extended from the Property to NW 27th Street. Owner agrees to reimburse City for the cost of such acquisition. The location of the sanitary sewer easement shall be subject to the approval of the City's Department of Public Works and Utilities.

5. Highway 34.

A. Temporary Access. The City agrees, subject to Nebraska Department of Roads (NDOR) approval, to provide Owner with temporary access from the Property onto Highway 34. Owner agrees that no final plat needing this temporary access from the Property onto Highway 34 shall be approved until NDOR has approved the temporary access. The temporary access and associated turn lanes shall be constructed by Owner at Owner's own cost and expense. The temporary access to Highway 34 will be removed when the Property has two (2) alternate permanent

paved access connections to the City's continuous paved arterial street system. In order to ensure the temporary nature of the access, the street the temporary connection to Highway 34 takes access from shall (1) be designed and built in its permanent configuration as a concrete paved cul-de-sac with curb and gutter; (2) a 24-foot wide temporary asphalt roadway without curb and gutter shall be constructed from the end of the cul-de-sac to Highway 34; and (3) the temporary asphalt roadway shall be signed with traffic control signs approved by the City's Department of Public Works and Utilities indicating the asphalt roadway connection to Highway 34 is a temporary access.

B. Removal of Temporary Access. Owner shall close the temporary asphalt roadway within three (3) days after the second permanent connection described in subparagraph A above is available and shall remove the temporary asphalt roadway within sixty (60) days thereafter.

6. NW 12th Street, Alvo Road and NW 27th Street.

A. NW 12th Street Construction. No lots abutting NW 12th Street between Missoula and Alvo Road shall be final platted until NW 12th Street has been constructed as an Arterial Street Impact Fee Facility Improvement with two lanes of permanent concrete pavement with curb and gutter shifted to one side of the centerline. The permanent concrete pavement will begin at Missoula and extend north to Alvo Road. This permanent concrete paving of NW 12th Street shall include left-turn lanes at all intersections at a length and width acceptable to the City's Department of Public Works and Utilities. NW 12th Street shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

B. Alvo Road Construction. No lots abutting Alvo Road shall be final platted until Alvo Road has been constructed as an Arterial Street Impact Fee Facility Improvement with two lanes of permanent concrete pavement with curb and gutter shifted to one side of the centerline. The permanent concrete pavement will begin at NW 12th Street and extend to the west boundary of the Property. This permanent concrete paving of Alvo Road shall include left-turn lanes and right-turn lanes at all intersections at a length and width acceptable to the City's Department of Public Works and Utilities. Alvo Road shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

C. NW 27th Street and Non-abutting Alvo Road Construction. In order to provide alternate permanent paved connections to the City's arterial street system, NW 27th Street from Highway 34 to Alvo Road and thence east along Alvo Road from the NW 27th Street intersection

to the west boundary of the Property; and/or Alvo Road from NW12th Street east to some future connection may be constructed by Owner as an Arterial Street Impact Fee Facility Improvement with two lanes of permanent concrete pavement shifted to one side of the centerline. The pavement shall include necessary left-turn lanes at the intersections at a length and width acceptable to the City's Department of Public Works and Utilities. These projects shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures. If necessary, the City agrees to use its eminent domain power to acquire the permanent and temporary construction easements needed for construction of these streets.

D. Reimbursement.

(1) Directed Arterial Street Impact Fees. The City agrees to reimburse Owner for the cost to construct the NW 12th Street, Alvo Road, and/or NW 27th Street Arterial Street Impact Fee Facility Improvements without interest from Directed Arterial Street Impact Fees collected against the entire development of the Property up to the Directed Arterial Street Impact Fee Amount of \$1,049,426 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Arterial Street Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) Said reimbursement shall be paid quarterly from Impact Fees actually received from this development;

(b) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

(2) Owner's Cost in Excess of Directed Arterial Street Impact Fees. In the event Owner's cost of construction of the improvements described in A above are in excess of the Directed Arterial Street Impact Fee Amount (\$1,049,426), City agrees to use its best efforts to reimburse Owner with interest for the excess cost from other Arterial Street Impact Fees collected from this and/or other developments within the same benefit district within eleven (11) years from the date the improvements described in D.(1) above are substantially completed as determined by the City, subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;

(b) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

7. Restriction on Development.

A. Access to Alvo Road. No access from Missoula Street to NW 12th Street shall be provided until NW 12th Street is paved from Missoula Street north to Alvo Road. In addition, no access to Alvo Road west of NW 12th Street shall be provided until Alvo Road is paved as an Arterial Street Impact Fee Facility from NW 12th Street to NW 27th Street and NW 27th Street is paved as an Arterial Street Impact Fee Facility from Alvo Road to Highway 34. Alvo Road from NW 12th Street to the west boundary of the Property shall be paved prior to the final platting of any abutting lots.

B. Secondary Access. Owner understands and agrees that Owner shall be limited to a maximum of 400 final platted lots for residential dwellings until such time as Owner, at Owner's own cost and expense, constructs two permanent concrete paved accesses connecting to a system of continuous paved streets connected into the City's arterial street system.

8. Future Cost Responsibilities. Owner understands and acknowledges that the proposed development of the Property shall be subject to the payment of impact fees and Owner agrees to pay said impact fees if development occurs.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

10. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

11. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

12. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

13. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

14. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

15. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

16. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

17. Default. Owner and City agree that the annexation and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind said change of zone or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

18. Definitions. For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

19. Recordation. This Agreement or a memorandum or notice thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

City Clerk

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

By: _____
Coleen J. Seng, Mayor

HIGHLANDS PRAIRIE VILLAGE, LLC,
a Nebraska limited liability company

By: _____
Steven M. Champoux, Managing Member

By: _____
Larry E. England, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Steven M. Champoux, Managing Member of Highlands Prairie Village, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Larry E. England, Manager of Highlands Prairie Village, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public